

**MORGAN COUNTY**  
**COMMERCIAL & INDUSTRIAL**  
**IMPROVEMENT LOCATION PERMIT ORDINANCE**  
**Adopted: September 27, 1996, effective November 1, 1996**  
**And Amended December 28, 2001 and May 13, 2010**

---

AN ORDINANCE REGULATING THE ISSUANCE OF IMPROVEMENT LOCATION PERMITS FOR COMMERCIAL & INDUSTRIAL SITES IN MORGAN COUNTY, WEST VIRGINIA.

**ARTICLE I – PURPOSE AND AUTHORITY**

The purpose of this Ordinance is to require an Improvement Location Permit and site plan approval for any commercial or industrial development in Morgan County, West Virginia. For the purpose of this Ordinance; commercial or industrial development shall include commercial, industrial, multi-family residential, camping areas, mobile home parks and institutional sites such as schools, libraries, churches, fire halls, etc. Multi-family residential means sites, buildings or developments with more than two dwelling units.

This ordinance is adopted by the authority of West Virginia Code 8A-1-1 to 8A-11-2 seq.

**ARTICLE II - GENERAL PROVISIONS**

The Morgan County Planning Commission in its consideration of Improvement Location Permits for commercial and industrial uses shall pay particular attention to the proposed location of structures, proposed use of structures, areas reserved for parking and number of parking spaces, points of access from existing roads and distances from those access points, internal streets and circulation patterns for shoppers, customers, clients or other patrons, existing and/or proposed street and circulation pattern for shipping and receiving, final grading plan of the entire area proposed for development, utility improvement plans for water distribution, fire hydrant locations, sanitary and storm sewers, surface drainage plan, outdoor advertising, outdoor lighting, landscaping, and potential nuisance protective measures proposed for buffer strips between the commercial or industrial area and adjacent areas.

**ARTICLE III -CRITERIA FOR ISSUANCE**

Subdividers or developers of commercial or industrial areas shall comply with the same requirements as residential subdividers or developers as set forth in the Morgan County Subdivision Ordinance. In addition, the following information is required prior to the issuance of Improvement Location Permits for commercial or industrial uses.

**Section 3.1 Site Plans**

- (A) New Development: A professionally prepared site plan shall be submitted for review by the Planning Commission for all new commercial and industrial developments.
- (B) Major Additions: A professionally prepared site plan shall be submitted for review by the Planning Commission for all major additions. A major addition shall constitute only those additions to the use of the site and physical expansions of on-site structures, which will directly affect the function of the site or potentially affect the surroundings. Any substantial change of use classification, alteration of on-site parking requirements, potential adverse impacts of off-site stormwater drainage, increased demand for public water and sewage or additions which will cause the rerouting of traffic circulation shall be construed as a "major addition".
- (C) Submission Procedure for all cases:
1. Site plans shall be prepared by a registered professional engineer, registered architect, registered landscape architect, or registered land surveyor; all to be licensed to practice in West Virginia.
  2. The consultant, agent, and/or property owner may arrange for a preliminary consultation with the Planning Department to discuss the general concept, use, and design of the proposal. If consultation is desired, a generalized sketch or plat of the proposed site plan shall be submitted with five (5) copies at least one (1) week prior to the scheduled consultation and shall consist of location map, boundary, topography, and general proposed land uses drawn to scale.
  3. In those cases where subdivision of land is not required, a minimum of six (6) copies of the site plan shall be submitted to the Morgan County Planning Department. The Planning Commission shall approve or disapprove the site plan within sixty (60) days from the date of a completed submission.
  4. Where the subdivision of land is required, a site plan which includes all information required for a preliminary plat submission may be considered by the Planning Commission as meeting the requirements of both site plan and preliminary subdivision plats.

### **Section 3.2     Site Plan Format**

The site plan format and informational requirements shall be the same as that of a preliminary subdivision plat (Article 13, Section 13.2 of the Morgan County Subdivision Regulations) for residential subdivisions involving single-family dwellings. The following additional information shall be addressed before site plan approval of commercial, industrial, multi-family residential, mobile home parks and institutional sites. Any requests for waivers shall comply with the same provisions required in the Morgan County Subdivision Regulations Article 6: Waivers.

1. Landscaping Plan.
2. Fencing.
3. Exterior Lighting (location and height).
4. Interior Roadways and Off-Street Parking.
5. Pedestrian Walkways and Sidewalks.

6. Provisions for Solid Waste Collection.
7. Open Space and Recreational Facilities.
8. Communications Antennas (TV, Radio, Satellite).
9. Transit/School Bus Waiting Areas.
10. Signs (location, size, height, and design).
11. Proposed Land Uses, Showing Building Locations.
12. Location of Material Storage.
13. Location of Special Facilities for Refuse Collection, Mail Delivery, etc.
14. Storm Water Management Provisions/ Sediment Erosion Control to be in compliance with the requirements of the Morgan County Stormwater Management Plan.
15. Traffic Flow and Control Devices.

(A) In those cases where the eventual site use is not known, the Planning Commission may waive the requirements for those data that are a function of specific use and may approve the site plan in preliminary form in order that construction may proceed. The applicant shall submit as much data as is available in order that the Planning Commission may render a thorough review of the site plan in preliminary form. The preliminary review shall contain enough information to establish the building setbacks, the proposed ingress and egress, the general areas devoted to parking, the proposed floor area, and any information available that may be used for computation of storm water runoff or other data pertaining to impervious surface. That information which is not known at the time of preliminary site plan review may be deferred by the Commission until final review and approval as a second phase of site plan review.

(B) Approval of the preliminary version of the site plan is good for six (6) months only after which time the final site plan shall be submitted for review and approval by the Commission. The final review shall provide for signs, outdoor lighting, the specific parking arrangements, and all other features required for site plan review not included on the preliminary form. Final review and approval of the site plan containing all the required information shall be granted by the Planning Commission prior to the issuance of an Improvement Location Permit.

## **ARTICLE IV – DESIGN REQUIREMENTS**

### **Section 4.1 Distance Requirements**

Any commercial or industrial buildings, mobile homes in mobile home parks, or multi-family residential buildings shall be located no closer than fifteen (15) feet from the property boundary line of the said parcel. If the property line separates the parcel from a residential parcel, the non-residential buildings shall instead be located no closer than 15% of the property width from the residential property boundary line up to a maximum requirement of fifty (50) feet and minimum requirement of fifteen (15) feet. The property width shall be measured at the midpoint of the property depth excluding panhandle areas. If covenants exist that would conflict with these specified minimum distances, the most restrictive requirement would prevail. Should a conflict exist with the requirements in Article 11 of the Morgan County Subdivision Regulations, the requirements of Article 11 shall govern.

Additionally, commercial, industrial or multi-family residential structures greater than forty (40) feet in height shall increase the aforementioned property line setback requirements for that structure by one half the additional height of the structure above forty (40) feet.

## **Section 4.2     Signage Requirements**

The maximum height of any freestanding sign or billboard on a commercial or industrial site shall be forty (40) feet or the height of the tallest building on the site, whichever is greater. A sign shall be placed no closer to the property line than one-half of the maximum building setback for the site as defined in Section 4.1. The maximum sign area shall be 100 square feet. The location of the sign shall in no way obstruct visibility in achieving adequate and safe sight distance exiting onto the access road from an intersection.

## **Section 4.3     Open Space Requirements**

Landscaped open space on any multi-family or mobile home parks shall generally not be less than 30% of the lot area and 10% for commercial and industrial development. The landscaped open space shall not be impervious or open for vehicular use and the landscaping shall be maintained in a reasonable manner. Ground cover shall be provided on all open spaces to prevent soil erosion. All areas which are not covered by paving, stone or other stable material shall be protected with a suitable ground cover consisting of spreading plants, sods or grasses less than 18 inches in height. Existing natural trees and landscaped areas left undisturbed by development on the lot may be used to satisfy this requirement. These requirements are not intended to supersede or be required in addition to the open space requirements to multi-family residential or mobile home park developments found in Article 11 of the Morgan County Subdivision Regulations.

## **Section 4.4     Screening and Landscaping Requirements**

All loading and service areas adjacent to a residential land use and all dumpsters, transformers, fuel storage, trash disposal areas, tanks and unsightly utilities regardless of adjacent land use should be screened from view. Vegetative screening consisting of a mix of deciduous and evergreen trees should be capable of adequate screening within five (5) years of initial planting. Structural screening through the use of a six (6) foot high solid fence or decorative wall may be used in lieu of vegetative screening with the approval of the Planning Commission. Landscaping plans shall be provided for review by the Planning Commission.

All screening materials and landscaping shall not encroach upon the adjoining property line at full maturity. Landscaping shall be a combination of shade trees, ornamental trees, evergreen trees, deciduous shrubs, evergreen shrubs and ground covers.

Existing acceptable vegetation should be retained when feasible. Credit may be applied to required perimeter landscape plantings if the existing trees can be maintained and are of acceptable size and health. Existing wooded areas shall be protected to prevent unnecessary destruction. At least 25% of the number of trees (minimum trunk caliper of five inches at six inches above the ground) that exist at the time of plan submission shall be maintained or replaced immediately following construction. Replacement trees shall be a minimum trunk caliper of three inches at a height of six inches above finished grade and located within nonbuildable sections of the site (i.e., floodplain, steep slope and setback areas). Plans shall be submitted showing existing trees and proposed construction and be in conformance with this section.

#### **Section 4.5     Lighting Recommendations**

Developers are encouraged to avoid usage of site lighting emitting objectionable glare observable from surrounding properties or streets and make every attempt possible to eliminate light spillover and glare on motor vehicle operators, pedestrians, and land uses within the light source's proximity. All lighting is encouraged to shall be directed downward and inward to the site.

#### **Section 4.6     Access Road Requirements**

All new access roads for commercial, industrial and multi-family sites must provide all weather access by a Standard AASHTO WB-50 design vehicle. Class I roads are required and limited to 8 percent maximum grade and must have a paved road surface 20 feet wide plus two foot shoulders or curb and guttering on each side, exclusive of parking areas. Access roads for campgrounds and mobile home parks may have a gravel road surface subject to the specifications in Section 12.1 of the Morgan County Subdivision Regulations.

#### **Section 4.7     Parking Requirements**

Due to the particularities of any given development, the inflexible application of parking standards may result in a development either with inadequate parking space or parking space far in excess of its needs. Appendix A of this ordinance contains parking guidelines that may be used by the County and applicant in determining the number of spaces provided for a particular development. The applicant may, in lieu of the guidelines attached, consult the Parking Generation Manual from the Institute of Transportation Engineers (ITE) for guidance. The applicant shall provide the Planning Commission with an explanation of the methodology and calculations used for determining the specific number of parking spaces provided on the plan for review. A minimum number of handicapped parking spaces should be provided in accordance with the Americans with Disability Act and shall be not less than one (1) space for every 25 parking spaces provided.

#### **Section 4.8     Noise, Vibration and Electrical Interference Recommendations**

Developers are encouraged to avoid any site usage that may generate noise that tends to have a disruptive effect upon uses located on adjacent lots, or upon users located outside the immediate space of the usage.

#### **Section 4.9     Odor, Smoke and Pollution References**

Any commercial, industrial or multi-family use that emits an "air contaminant" as defined in state air pollution control law shall comply with the applicable standards concerning air pollution as set forth in the West Virginia Code. No Improvement Location Permit may be issued with respect to any development covered by this Ordinance that emits "air contaminants" until the West Virginia Department of Environmental Protection has certified to the County that the appropriate state permits have been received by the developer, or that the developer will be eligible to receive such permits and that the development is otherwise in compliance with applicable air pollution laws.

No commercial, industrial or multi-family use may discharge any waste contrary to the provisions of the West Virginia Code. No commercial, industrial or multi-family use may discharge into municipal

sewage treatment facilities any waste that cannot be adequately treated by biological means as determined by the Warm Springs Public Service District.

#### **Section 4.10 Stormwater Management**

All commercial, industrial, mobile home parks or multi-family developments shall comply with the Morgan County Stormwater Management Ordinance in force at the time the application is being considered by the Planning Commission.

### **ARTICLE V - ADMINISTRATION**

#### **Section 5.1 Improvement Location Permits and Site Plan Approvals Required**

It shall be unlawful for any person, partnership, business or corporation to undertake or cause to be undertaken, any development or new construction, major addition or relocation of any structure of a commercial or industrial use unless an Improvement Location Permit has been obtained from the Planning Commission.

#### **Section 5.2 Farm Exemption**

A farm equal to the following definition shall be exempt from this ordinance:

Farm shall mean and include land currently being used primarily for farming purposes, whether by the owner thereof or by a tenant, and which has been so used for at least seasonally during the year next preceding the then current tax year.

Farming Purposes shall mean the utilization of land to produce for sale, consumption or use, any agricultural products, including, but not limited to, livestock, poultry, fruit, vegetables, grains or hays or any of the products derived from any of the foregoing, tobacco, syrups, honey, and any and all horticultural and nursery stock, Christmas trees, all sizes or ornamental trees, sod, seed, any and all similar commodities or products including farm wood lots and the parts of a farm which are lands lying fallow, or in timber.

#### **Section 5.3 Approval of Permits and Plans**

All permits and plans shall be approved only after it has been determined that the proposed work to be undertaken will be in conformance with the requirements of this and all other applicable codes and ordinances including all requirements of the Morgan County Stormwater Management Plan. A record of all information supplied to the Planning Commission shall be kept on file by the Morgan County Planning Department.

#### **Section 5.4 Application Procedures**

Pre-application for an Improvement Location Permit and site plan approvals shall be made, *in writing*, to the County Planner and shall include all information requested on the pre-application questionnaire. Every applicant shall include all the information required under Article III of this Ordinance.

#### **Section 5.5 Changes**

After the issuance of an Improvement Location Permit or site plan approval by the Planning Commission, no changes of any kind shall be made to the application, permit or any of the plans, specifications or other documents submitted with the application without the written consent or approval of the County Planner.

#### **Section 5.6 Placards**

In addition to the Improvement Location Permit, the County Planner shall issue a placard which shall be displayed on the premises during the time construction is in progress. This placard shall show the number of the Improvement Location Permit, the date of issuance, and be signed by the County Planner.

#### **Section 5.7 Start of Construction**

Work on the proposed construction shall begin within five (5) years after the date of issuance of the permit or the permit shall expire unless a time extension is granted, in writing, by the Planning Commission.

#### **Section 5.8 Extension Requests**

The developer may request an extension of up to one year. This extension shall not be considered until 36 months after the initial approval of the Commercial Improvement Location Permit site plan and shall be based on good cause. This extension shall begin on the five year anniversary of the date of approval of the Commercial Improvement Location Permit site plan. If the project's site improvements, excluding the principal building(s), as shown on the approved site plan are not at least 30% complete, as determined by the county engineer, at the commencement of the extension period, the developer shall comply with the regulations in effect at the start of the extension period. A maximum of two extensions may be permitted.

#### **Section 5.9 Inspection and Revocation**

During the construction period, the County Planner or other authorized official may inspect the premises to determine that the work is progressing in compliance with all applicable laws and ordinances. In the event the County Planner discovers that the work does not comply with the permit application or any applicable laws and ordinances, or that there has been a false statement or misrepresentation by the applicant, the County Planner shall revoke the Improvement Location Permit and report such fact to the Planning Commission for whatever action it considers necessary.

#### **Section 5.10 Fees**

Applications for an Improvement Location Permit shall be accompanied by a fee, payable to the Morgan County Planning Commission, based upon a set fee schedule approved by the Planning Commission and Morgan County Commission. The applicant shall also be responsible to pay for any engineering fees.

### **ARTICLE VI APPEALS AND PENALTIES**

## **Section 6.1 Request for Reconsideration**

If the Morgan County Planning Commission denies an application, the Planning Commission shall notify the applicant in writing of the reasons for denial.

The applicant may request, one time, a reconsideration of the decision of the Planning Commission, which request for reconsideration must be in writing and received by the Planning Commission no later than ten days after the decision of the Planning Commission is received by the applicant.

### **Review Criteria:**

All decisions for reconsideration to all provisions of this Ordinance shall adhere to the following criteria:

- (A) Affirmative decisions shall only be issued by the Planning Commission upon:
  - 1. A showing of good and sufficient cause, or
  - 2. A determination that failure to grant the appeal would result in exceptional hardship to the applicant, or
  - 3. A determination that the granting of an appeal will not result in additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public or conflict with local laws or ordinances.
- (B) An affirmative decision shall be issued only upon determination that it is the minimum necessary to afford relief.
- (C) The Planning Commission shall maintain a record of all decisions including justification for their issuance.

## **Section 6.2 Appeal Process**

- A.) An appeal may be made by an aggrieved person from any decision or ruling of the Planning Commission to:
  - 1. The circuit court, pursuant to the provisions of article nine of this chapter;
  - 2. A board of subdivision and land development appeals, if the governing body has established a board of subdivision and land development appeals by ordinance.
- B.) Within thirty days after the date of the denial, the petition, specifying the grounds of the appeal in writing, must be filed with:
  - 1. The circuit court of the county in which the affected land or the major portion of the affected land is located; or
  - 2. The board of subdivision and land development appeals that has jurisdiction over the affected land. (West Virginia Code 8A-5-10 – Appeals Process)

Every decision or order of the Planning Commission is subject to review by certiorari. Within thirty days after a decision or order by the Planning Commission, any aggrieved person may present to the circuit court of the county in which the affected premises are located, a duly verified petition for a writ of certiorari setting forth:

- 1. That the decision or order by the Planning Commission is illegal in whole or in part; and
- 2. Specify the grounds of the alleged illegality.



Any final decision made by the Morgan County Planning Commission pursuant to this Ordinance may be appealed to the Morgan County Circuit Court as stated in West Virginia Code 8A-9-1 through 8A-9-7 (Article 9, Appeal Process).

### **Section 6.3 Penalties**

In accordance with West Virginia Code 8A-10-2; any person who has violated any provision of this Ordinance is guilty of a misdemeanor and upon conviction, shall be fined not less than Fifty Dollars (\$50.00), not more than Five Hundred Dollars (\$500.00).

In addition to the above penalties, the Morgan County Planning Commission, through its President or other officer, or any designated enforcement official, is authorized to seek an injunction in the Circuit Court of Morgan County as stated in West Virginia Code 8A-10-3, to enjoin a person or legal entity from violating the provisions of the Ordinance. All other actions are hereby reserved including action in equity for the proper enforcement of this Ordinance. The imposition of a fine or penalty for any violation, or non-compliance with, this Ordinance shall not excuse the violation or non-compliance, or permit it to continue; and all such persons shall be required to correct or remedy such violation or noncompliance within a reasonable time. Any structure constructed, reconstructed, enlarged, altered or relocated in noncompliance with this Ordinance may be declared a public nuisance by the Morgan County Planning Commission and abatable as such.

## **ARTICLE VIII - SEVERABILITY AND COUNTY LIABILITY**

### **Section 7.1 Severability**

If any section, subsection, paragraph, sentence, clause or phrase of this Ordinance shall be declared invalid for any reason whatever, such decision shall not affect the remaining portions of this Ordinance which shall remain in full force and effect, and for this purpose the provisions of this Ordinance are hereby declared to be severable.

### **Section 7.2 County Liability**

The granting of a permit or approval of a development plan or site plan shall not constitute a guarantee or warranty of any kind by the Morgan County Commission or Planning Commission or by any official or employee thereof of the practicability or safety of the proposed use, and shall create no liability upon the Morgan County Commission or Planning Commission, its officials or employees.

**ARTICLE VIII - Enactment**

Enacted and ordained this 27th day of September, 1996, effective immediately,  
and; As Amended December 28, 2001 and May 13, 2010.

**MORGAN COUNTY COMMISSION  
BY:**

\_\_\_\_\_  
**Brenda J. Hutchinson, President**

\_\_\_\_\_  
**Stacy A. Dugan**

\_\_\_\_\_  
**Thomas R. Swaim**

## Appendix A

Type of Use	Parking Spaces Required
Multi-family dwellings	2 spaces for each dwelling unit
Industrial uses	1 for every employee on the largest shift for which the building is designed plus 1 for each motor vehicle used in the business plus ample spaces for visitor parking
Hotels and motels	1 per each sleeping room, plus 1 for each employee on largest shift
Funeral parlors and mortuaries	1 for each 150 square feet of floor area devoted to viewing
Retail stores	1 for each 200 square feet of floor area excluding preparation and/or storage areas
Banks, financial institutional and similar uses	1 for each 200 square feet of floor area excluding storage area
Offices, public or professional administration, or service buildings	1 for each 400 square feet of floor area
Shopping centers	5.5 spaces for each 1,000 square feet of gross leasable area
Dining rooms, restaurants, taverns, night clubs, etc.	1 space per each 50 square feet of floor area devoted to customer service, but excluding food preparation and storage
Auditoriums, sport arenas, theaters, and similar uses	1 for each 4 seats
Churches and other places of religious assembly	1 for each 5 seats
Golf Courses	60 spaces per nine holes plus the spaces required for accessory uses (restaurants, shops, etc.)

<b>Hospitals</b>	<b>1 for each bed plus one for every employee on the largest shift</b>
<b>Convenience Store</b>	<b>1.4 spaces per 1,000 square feet of gross floor area</b>
<b>Medical and dental clinics and offices</b>	<b>1 for every 100 square feet of floor area of examination, treating room office and waiting room</b>
<b>Sanitariums, homes for the aged, nursing homes, children homes, asylums, and similar uses</b>	<b>1 for each 2 beds</b>
<b>Libraries, museums and art galleries</b>	<b>1 for each 400 square feet of floor area</b>
<b>Elementary and middle schools</b>	<b>2 for each classroom and 1 for every 8 seats in auditoriums or assembly halls</b>
<b>High schools</b>	<b>1 for every 4 students and 1 for each teacher and employee</b>
<b>Business, technical and trade schools</b>	<b>1 for each 2 students</b>
<b>Colleges, universities</b>	<b>3 for each 4 on-campus students plus 1 for each full-time employee regardless of shift, plus the spaces required for accessory uses (churches, cultural facilities, stadiums, etc.)</b>
<b>Kindergartens, nursery schools and similar uses</b>	<b>2 for each classroom, but not less than 6 for the building</b>
<b>Child care centers</b>	<b>1 for every staff person and 1 space for every 10 licensed slots</b>
<b>All other types of permitted institutional or commercial uses</b>	<b>1 for each 300 square feet of floor area</b>